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769-197 CIP Div. 2 (ITW 8055.02)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Art Malin et al.

Art Unit: 3727

Serial No.: 09/480,061

Examiner: Joseph C. Merek

Filed: January 10, 2000

Customer No. 51468

For: **ZIPPER STRIP AND METHOD OF POSITIONING THE STRIP
TRANSVERSE LONGITUDINAL AXIS**

TRANSMITTAL OF APPEAL BRIEF

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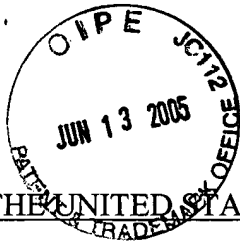
S I R:

Enclosed is an original brief to the Board of Patent Appeals and Interferences and three photocopies thereof. This Appeal Brief is being filed pursuant to the Notice of Appeal dated April 12, 2005, with an apparent Office filing date of April 14, 2005. A check for the Rule 17 fee for filing an appeal brief is enclosed herewith. Any other fees may be charged to Deposit Account 50-1145, Order No. 769-197 CIP Div. 2.

Respectfully submitted,

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

Application Serial No. 09/480,061

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Art Unit: 3727

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**ZIPPER STRIP AND METHOD OF POSITIONING THE STRIP
TRANSVERSE LONGITUDINAL AXIS**

Ex parte: Art Malin
Donald L. Van Erden
James G. Kohl
Michael J. McMahon

BRIEF FOR THE APPELLANTS

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Attorneys for the Appellants

PH Ref.: 769-197 CIP Div. 2
ITW 8055.02

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I. REAL PARTY IN INTEREST

The real party in interest is assignee Illinois Tool Works Inc.

II. RELATED APPEALS AND INTERFERENCES

None

III. STATUS OF CLAIMS

Claims 14 and 16 are rejected and are being appealed herein. The remaining claims are not pending.

IV. STATUS OF AMENDMENTS

No amendment was filed in response to the Office Action of January 12, 2005. A Notice of Appeal was dated April 12, 2005, with an Office filing date of April 14, 2005.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 14 claims a reclosable package comprising: a first wall and a second wall opposite said first wall (Fig. 8, elements 114, 116; page 13, lines 12-21); a zipper strip (Fig. 8, elements 24, 26; page 13, lines 12-21) for selectively opening and closing said package, said zipper strip comprising a male interlocking profile extending along an internal surface of said first wall and a female interlocking profile extending along an internal surface of said second wall (Fig. 8, elements 24, 26; page 13, lines 12-21); said male interlocking profile having a male interlocking member and a male web integral therewith (Fig. 1, elements 12, 16; page 5, line 32- page 6, line 11); said female interlocking profile having a female interlocking member and a

female web integral therewith (Fig. 1, elements 14, 18; page 5, line 32 - page 6, line 11), said male interlocking member being engageable within said female interlocking member to join said male and female interlocking profiles together (Fig. 1, elements 12, 14; page 5, line 31 – page 6, line 11); wherein one of said male and female webs is wider than the other of said male and female webs in at least one of two directions from said male and female interlocking members (Fig. 1, elements 12, 14; page 6, lines 12-19), the greater width of the wider of said male and female webs being at least one flange extending widthwise beyond the other of said male and female webs (Fig. 1, elements 12, 14; page 6, lines 12-19); wherein said at least one flange of one interlocking profile is sealed to said first and second walls at a first seal area spaced apart widthwise from said interlocking members on a first widthwise side of said interlocking members (Fig. 1, elements 24, 26, as sealed by elements 28; page 7, lines 22-32); wherein the other interlocking profile is sealed to the second wall at a second seal area spaced apart widthwise from said interlocking members and separated from said first seal area by the joined thickness of said interlocking profiles along the length of said zipper strip, said second seal area being on said first widthwise side of said interlocking members (Fig. 8, upper profiles); and wherein said package includes sealed ends formed from said first and second walls extending in the direction as said zipper thereby forming a top and a bottom of said package (Fig. 8, elements 114, 116; page 13, lines 12-21) and wherein one of said walls further includes a lap or fin seal formed in a central location thereof, said lap or fin seal extending substantially perpendicular to said zipper (Fig. 8, as amended, element 300, viewed in consideration with Figure 7).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Do the drawings comply with rule 83(a)?
2. Do Claims 14 and 16 comply with the written description requirement 35 U.S.C. §112, first paragraph?
3. Are Claims 14 and 16 patentable under 35 U.S.C. §103(a) over the May reference (U.S. Patent No. 5,660,479) in view of the Uramoto reference (U.S. Patent No. Re. 33,674)?
4. Are Claims 14 and 16 patentable under 35 U.S.C. §103(a) over the May reference in view of the Yeager reference (WO 97/06062) or the '839 reference (JP 62-273839).

VII. ARGUMENTS

1. Do the drawings comply with rule 83(a)?

In response to the Rule 83(a) objection, a revised Figure 8 was previously submitted (see Exhibit A, attached hereto) to clarify a structure associated with “fin seal 300” which is formed by bringing together the edges 96. This is consistent with Figure 7 wherein it is clear that the edges 96 being brought together would result in a joinder which is oriented in the machine direction and therefore “substantially perpendicular to said zipper”, considering that the zipper is mounted in cross-machine direction. That is, the seal in the machine direction is perpendicular to the zipper in the cross-machine direction. See also page 12, lines 26-29 of the specification. This drawing change is fully supported by the specification and drawings, as originally filed. No new matter has been added.

In view of the above, it is respectfully submitted that the numeral “300” previously added to the specification is fully supported and the drawings comply with Rule 83(a).

2. Do Claims 14 and 16 comply with the written description requirement of 35 U.S.C. §112, first paragraph?

As described in the previous paragraph, Figure 8 has been amended, consistent with the specification to show a lap or fin seal substantially perpendicular to the zipper, particularly when considered in combination with Figure 7 and page 12, lines 26-29. It is therefore respectfully submitted that Claims 14 and 16 comply with the written description requirement of 35 U.S.C. §112, first paragraph.

3. Are Claims 14 and 16 patentable under 35 U.S.C. §103(a) over the May reference (U.S. Patent No. 5,660,479) in view of the Uramoto reference (U.S. Patent No. Re. 33,674)?

The May and Uramoto references disclose side seams rather than lap or fin seals.

By way of background, typically a lap seal bag is created by folding the edges of the film together and sealing the edges together, thereby forming a tube. The top and bottom seals are formed thereby creating a bag. The resulting bag, therefore has only one seal extending from top to bottom, which is known as a lap or fin seal. A side seal bag is created by either folding the film, then sealing both sides and the top of the film to create the bag. Alternately, rather than folding the film, top and bottom separate films can be provided and the edges of the top and bottom films sealed together to form side seals.

Claim 14 recites that one of the walls “further includes a lap or fin seal formed in a central location thereof”. This clearly distinguishes over a side seal, such as is disclosed in the cited art, wherein the seals are formed at the joinder of the first and second walls, rather than at a central location of one of the walls.

Moreover, the Uramoto reference discloses a package made using a form fill and seal method where the zipper is applied in the machine direction. As a result, the Uramoto reference does not teach or suggest a separate lap or fin seal extending perpendicular to the zipper from the top to the bottom of the package.

It is respectfully submitted that the presently pending claims are patentable over the cited prior art.

4. Are Claims 14 and 16 patentable under 35 U.S.C. §103(a) over the May reference in view of the Yeager reference (WO 97/06062) or the '839 reference (JP 62-273839)?

As discussed above, the May reference discloses side seals rather than lap or fin seams.

While both cited secondary references (the Yeager reference and the '839 reference) appear to disclose lap seals, there is nothing which would suggest to the person of average skill in the art to excise the lap seals from the secondary references and graft these lap seals to the primary reference. In other words, there is nothing to suggest the combination of this art.

It is respectfully submitted that the presently pending claims are patentable over the cited prior art.

The Board is respectfully requested to find all of the presently pending claims to be allowable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ronald E. Brown", with a stylized flourish underneath.

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VIII. APPENDIX OF PRESENTLY PENDING CLAIMS

Claims 1-13: cancelled.

14. A reclosable package comprising:

a first wall and a second wall opposite said first wall;

a zipper strip for selectively opening and closing said package, said zipper strip comprising a male interlocking profile extending along an internal surface of said first wall and a female interlocking profile extending along an internal surface of said second wall;

said male interlocking profile having a male interlocking member and a male web integral therewith;

said female interlocking profile having a female interlocking member and a female web integral therewith, said male interlocking member being engageable within said female interlocking member to join said male and female interlocking profiles together;

wherein one of said male and female webs is wider than the other of said male and female webs in at least one of two directions from said male and female interlocking members, the greater width of the wider of said male and female webs being at least one flange extending widthwise beyond the other of said male and female webs;

wherein said at least one flange of one interlocking profile is sealed to said first and second walls at a first seal area spaced apart widthwise from said interlocking members on a first widthwise side of said interlocking members;

wherein the other interlocking profile is sealed to the second wall at a second seal area spaced apart widthwise from said interlocking members and separated from said first seal area by

the joined thickness of said interlocking profiles along the length of said zipper strip, said second seal area being on said first widthwise side of said interlocking members; and

wherein said package includes sealed ends formed from said first and second walls extending in the direction as said zipper thereby forming a top and a bottom of said package and wherein one of said walls further includes a lap or fin seal formed in a central location thereof, said lap or fin seal extending substantially perpendicular to said zipper.

Claim 15: cancelled.

16. A reclosable package according to claim 14 wherein a portion of said wider web of said interlocking profile wherein said portion is not said at least one flange sealed at the first seal area, is separately sealed to the first package wall as a third seal area, said third seal area spaced apart widthwise from said interlocking members and on a widthwise side of said interlocking members opposite to said first widthwise side.

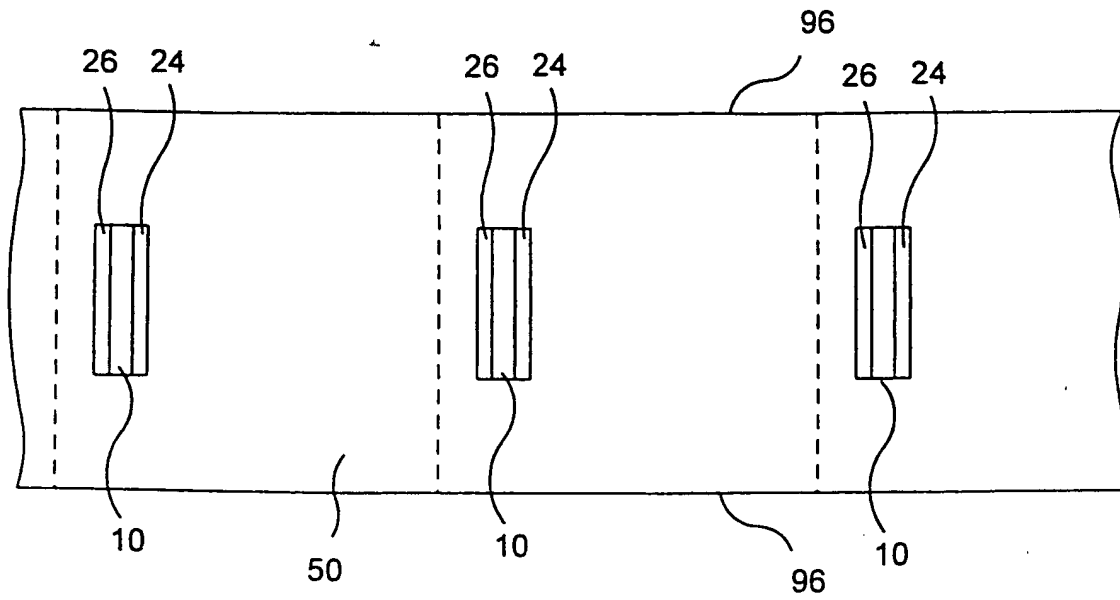


FIG. 7

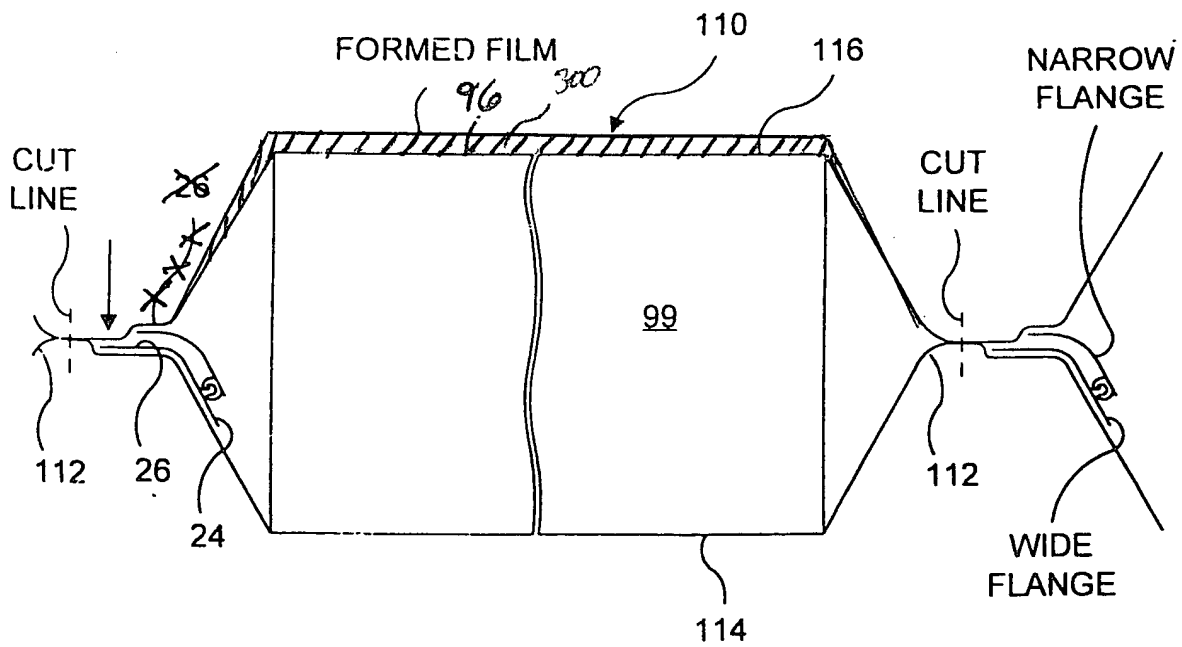


FIG. 8